

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DATE FILED: <u>4/16/19</u>

FENIX SECURITIES, LLC,

Petitioner,

v.

AXOS CLEARING LLC (FORMERLY
KNOWN AS COR CLEARING LLC),

Respondent.

Civil Action No. 19-cv-03331 (LGS)

**AMENDED ORDER TO SHOW
CAUSE FOR TEMPORARY
RESTRAINING ORDER**

This order amends the order to show cause for a temporary restraining order entered on April 15, 2019.

Upon the accompanying declaration of Julian Galvez, sworn to on April 15, 2019, the declaration of Peter Ligh, sworn to on April 15, 2019, together with the exhibits annexed thereto; the Petition; and, Plaintiff's Memorandum of Law, I find that:

It clearly appears from specific facts shown by affidavit that immediate and irreparable injury, namely the loss of clientele, will result to Fenix before Axos or Axos's counsel can be heard in opposition; and (2) Fenix's counsel certified to the Court in writing both the efforts that have been made to give notice and the reasons supporting the claim that notice should not be required. Specifically, Fenix's counsel certified that, on April 15, 2019, at approximately 12:20 p.m., he emailed to Axos's counsel a copy of Fenix's papers in support of its petition seeking a temporary restraining order in this Court. Later that day, at about 1:00 p.m., Fenix's counsel also spoke with Axos's counsel on the telephone to tell him that Fenix's counsel was on his way to this courthouse to seek a temporary restraining order. Fenix's counsel certified that Axos's counsel did not indicate any desire to appear in Court to participate in the temporary restraining order proceeding.

Based on the foregoing findings, it is:

ORDERED, that Defendant Axos Clearing LLC (formerly known as COR Clearing LLC) (“Axos”) show cause before a motion term of this Court, at Room 26A, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on April 16, 2019, at 4:00 o’clock in the afternoon thereof, or as soon thereafter as counsel may be heard, as to why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure temporarily enjoining Axos from:

- a. terminating (or deeming terminated) the Fully Disclosed Clearing Agreement, dated October 15, 2015, as amended on March 1, 2018, (the “FDCA”);
- b. limiting Fenix and its customers to only closing transactions effective market open April 15, 2019;
- c. taking actions pursuant to Section 10.7 or Section 9 (or any other provision of the FDCA that is triggered upon a termination);
- d. engaging in any other actions by which Axos may seek to avoid its obligations to provide the Services (as defined within the parties’ agreement) under the FDCA, including, but not limited to, exercising its purported rights under Section 2.3 of the FDCA;
- e. preventing Fenix’s withdrawal of its Accounts, including, but not limited to, Margin Acct No. 1196-0488;
- f. deviating from its ordinary and normal course of conduct with respect to providing the Services; and
- g. granting such other and further relief as may be just and proper.

ORDERED, that sufficient reason having been shown therefor pursuant to Rule 65, Axos is temporarily restrained and enjoined from:

- a. terminating (or deeming terminated) the Fully Disclosed Clearing Agreement, dated October 15, 2015, as amended on March 1, 2018, (the "FDCA");
- b. limiting Fenix and its customers to only closing transactions effective market open April 15, 2019;
- c. taking actions pursuant to Section 10.7 or Section 9 (or any other provision of the FDCA that is triggered upon a termination);
- d. engaging in any other actions by which Axos may seek to avoid its obligations to provide the Services (as defined within the parties' agreement) under the FDCA, including, but not limited to, exercising its purported rights under Section 2.3 of the FDCA;
- e. preventing Fenix's withdrawal of its Accounts, including, but not limited to, Margin Acct No. 1196-0488;
- f. deviating from its ordinary and normal course of conduct with respect to providing the Services; and
- g. granting such other and further relief as may be just and proper.

ORDERED that any further papers in opposition to the application for a temporary restraining order be filed with the Court by ECF, on or before April 16, 2019, at ~~12:00 noon~~ ^{4:00 p.m.}; *-Kmw*

ORDERED that any requirement to post security is waived ^{*(until further notice)*} and it is further

ORDERED that email service of a copy of this amended order and its supporting papers upon Axos or its counsel on or before 1:00 p.m., April 16, 2019, shall be deemed good and sufficient service thereof.

This order is deemed entered as of April 16, 2019, at 1:00 p.m., and shall expire fourteen days thereafter.

Date: April 16, 2019

ENTER: 4-16-19

William M. Wood

United States District Judge

Part I